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Ong Suan Sim v Paul Wilfred Yap @ Yap Ah Tee

B

HIGH COURT (SHAH ALAM) — DIVORCE PETITION NO 33–665–11 OF 2016
HAYATUL AKMAL JC
16 JANUARY 2019

C

Family law — Divorce — Petition — Claims for contribution in kind — Whether claim supported by plausible evidential materials — Whether spending on household expenses was sufficient to invoke the provision of s 76(2) of the Law Reform (Marriage and Divorce) Act 1976 to show contributions — Law Reform (Marriage and Divorce) Act 1976 s 76(2)

D

This was a single divorce petition filed by the petitioner wife against the respondent husband seeking for an order for the dissolution of their marriage, custody care and control and the maintenance of the children of the marriage, reimbursement of half of the maintenance of the said children, other prayers and costs. The respondent agreed to the divorce and for the decree nisi to be made absolute after a month and had also filed a cross-petition. The agreed facts were that: (a) the marriage had irretrievably broken down and parties have agreed to divorce and the respondent had agreed that custody care and control of the younger son of this marriage be given to the petitioner or in the alternative that the petitioner and respondent were given joint custody; and (b) the remaining issues relating to the maintenance of the said children, the cross-petition which included division of matrimonial assets, contribution for cost for maintenance and education of the said children of the marriage. The petitioner was not claiming for spousal support/maintenance but was only claiming for the respondent to reimburse her on all expenses for the maintenance, cost of living and for the education/music classes of the said children, domestic helper and other prayers.

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Held, allowing the petition and dismissing the respondent's application with costs of RM10,000

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(1) As the parties had agreed to divorce and the petitioner was not claiming for spousal support or maintenance, therefore it was not necessary for the court to make a finding as to the breakdown of the marriage (see para 8).

I

(2) The claim by the respondent for his contribution in kind towards the family were not supported by any plausible evidential materials and the expenses that he did spend were what was expected from a father, these

expenses could not be construed as contribution towards the purchase of the Botanic house which entitle the respondent to a claim towards the Botanic house (see para 26).

(3) A party who makes a claim must prove such a claim, it is insufficient to merely write down the particulars and throw them at the head of the court and merely say that is the losses suffered and asks for compensation thereof. The law makes it incumbent on such person to prove the claim to the satisfaction of the court (see para 39).

(4) Even if the respondent had spent on household expenses, that fact alone was not sufficient for the respondent to invoke the provision of s 76(2) of the Law Reform (Marriage and Divorce) Act 1976 to show his contributions to the purchase of the said properties (see para 40).

(5) The respondent had failed to prove to the satisfaction of the court of his alleged contributions for the purchase of the said properties and therefore his claim for the half share of those said properties were dismissed (see para 43).

(6) The court ordered the respondent to pay half of the total cost of the two cars which was established that the petitioner was the one responsible for buying and paying for the said motor vehicles, but the respondent was the one using it claiming it was used to fetch the said children of the marriage. In relation to the domestic helper, it was not disputed that they had the said domestic helper for a total of ten years and therefore the respondent was ordered to pay half of the total expenses spent on the domestic helper (see para 44).

[Bahasa Malaysia summary

Ini merupakan satu petisyen cerai yang difailkan oleh pempetisyen isteri terhadap responden suami yang memohon untuk satu perintah pembubaran perkahwinan, hak untuk menjaga dan nafkah anak-anak, pembayaran balik separuh daripada nafkah anak-anak tersebut, dan lain-lain perintah dan kos. Responden bersetuju untuk penceraian tersebut dan untuk dekri nisi dijadikan mutlak selepas sebulan dan juga memfailkan petisyen silang. Fakta yang dipersetujui adalah: (i) perkahwinan tersebut telah gagal dan pihak-pihak bersetuju untuk bercerai dan responden bersetuju agar hak untuk menjaga anak kecil perkahwinan ini diberikan kepada pempetisyen atau secara alternatif pempetisyen dan responden diberikan hak jagaan bersama; dan (ii) isu-isu lain berkaitan dengan nafkah anak-anak tesrsebut, petisyen silang yang termasuk pembahagian harta benda suami isteri, sumbangan untuk kos nafkah dan pendidikan anak-anak perkahwinan itu. Pempetisyen tidak menuntut untuk apa-apa sokongan/nafkah suami-isteri tetapi hanya menuntut untuk responden membayar semula semua perbelanjaan untuk nafkah, kos hidup dan pendidikan/kelas musik kanak-kanak tersebut, pembantu rumah dan perintah lain.

Diputuskan, membenarkan petisyen dan mengetepikan permohonan responden dengan kos RM10,000:

(1) Oleh kerana pihak-pihak bersetuju untuk bercerai dan pempetisyen tidak menuntut untuk sokongan/nafkah suami-isteri, oleh itu adalah tidak perlu untuk mahkamah membuat dapatan berkaitan dengan keretakan perkahwinan (lihat perenggan 8).

(2) Tuntutan responden untuk sumbangan beliau terhadap keluarga tidak disokong oleh apa-apa bahan keterangan yang munasabah dan perbelanjaan yang dia belanjakan merupakan apa yang diperlukan oleh seorang bapa, perbelanjaan ini tidak boleh dikira sebagai sumbangan terhadap pembelian rumah Botanic yang akan melayakkan responden untuk membuat tuntutan terhadap rumah Botanic (lihat perenggan 26).

(3) Pihak yang membuat tuntutan perlu membuktikan tuntutan tersebut, adalah tidak mencukupi untuk hanya menulis butiran dan memberikannya kepada mahkamah dan hanya menyatakan bahawa ini merupakan kerugian yang dialami dan memohon untuk ganti rugi. Undung-undang membuatnya perlu untuk individu tersebut untuk membuktikan tuntutannya sehingga mahkamah berpuas hati (lihat perenggan 39).

(4) Jikalau pun responden telah membelanjakan terhadap perbelanjaan rumah tangga, fakta tersebut secara sendirinya tidak mencukupi untuk responden menggunakan peruntukan s 76(2) Akta Pembaharuan Undang-Undang (Perkahwinan dan Penceraian) 1976 untuk menunjukan sumbangannya terhadap pembelian hartanah tersebut (lihat perenggan 40).

(5) Responden gagal untuk membuktikan sehingga mahkamah berpuas hati berkenaan dengan sumbangannya terhadap pembelian hartanah tersebut dan oleh itu tuntutannya terhadap separuh daripada hartanah tersebut diketepikan (lihat perenggan 43).

(6) Mahkamah memerintahkan responden untuk membayar separuh daripada jumlah kos dua kereta yang dibuktikan oleh pempetisyen bahawa orang yang bertanggungjawab untuk membeli dan membayar kenderaan bermotor tersebut, tetapi responden merupakan orang yang menggunakannya yang menyatakan bahawa ianya digunakan untuk mengambil anak-anak perkahwinan tersebut. Berkaitan dengan pembantu rumah, ianya tidak dinafikan bahawa pembantu rumah tersebut digaji untuk tempoh sepuluh tahun dan oleh itu responden diperintahkan untuk membayar separuh daripada jumlah kos yang dibelanjakan untuk pembantu rumah itu (lihat perenggan 44).]

Notes

For cases on petition, see 7(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 4381–4392.

Cases referred to

Giga Engineering & Construction Sdn Bhd v Yip Chee Seng & Sons Sdn Bhd & Anor [2015] 6 MLJ 449, FC (refd)

Ng Li Lin (P) v Ting Tian Hwa [2017] 10 MLJ 626, HC (folld)

Perman Sdn Bhd & Ors v European Commodities Sdn Bhd & Anor [2006] 1 MLJ 97; [2005] 4 CLJ 750, CA (refd)

Renuka a/p Muniandy @ Ramakrishnan v Jeeva a/l Kalia Perumal [2017] 9 MLJ 473, HC (refd)

Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd [1994] 3 MLJ 777, FC (refd)

Yap Yen Piow v Hee Wee Eng [2017] 1 MLJ 17, CA (folld)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 76(1), (2), (2)(c), (3), (4)(b), 78, 88

CM Lai (CM Lai & Partners) for the petitioner wife.
JR Samuel (JR Samuel & Assoc) for the respondent husband.

Hayatul Akmal JC:

INTRODUCTION

[1] This is a single divorce petition (amended, encl 48) filed by the petitioner wife ('PW') against the respondent husband ('RH'), seeking an order for the dissolution of their marriage, custody, care and control and the maintenance of the children of the marriage, reimbursement of half of the maintenance of the said children, other prayers and cost.

[2] For ease of reference I reproduce (briefly) the claim by PW against RH as follows:

(a) Perkahwinan mereka dibubarkan;

(b) Hak penjagaan, pemeliharaan dan kawalan anak yang bernama Isaac Yap Wen-Shen (L) diberikan kepada Pempetisyen dan Responden diberi kebenaran melawat anak pada masa-masa yang munasabah;

(c) Responden membayar separuh (1/2) nafkah hidup anak-anak dan nafkah tersebut dimasukkan ke dalam akaun Pempetisyen, pada atau sebelum 7 haribulan setiap bulan dari tarikh Petisyen ini difailkan seperti berikut:-

(i) Separuh (1/2) nafkah hidup anak bernama Yap Wen-Xian sebanyak

RM2,000.00 sebulan dari bulan Ogos 2016 sehingga tamat pelajaran pada bulan Ogos 2018.

(ii) Separuh (1/2) nafkah hidup anak bernama Isaac Yap Wen-Shen sebanyak RMS00.00 sebulan bermula bulan Ogos 2016 dari tingkatan 2 hingga tingkatan 5 dan RM750.00 dari tingkatan 6 (atau peringkat persamaan dengannya) sehingga tamat sekolah.

(d) Tidak ada tuntutan saraan hidup oleh Pempetisyen;

(e) Responden membayar balik kepada Pempetisyen separuh (1/2) daripada wang yang telah dikeluarkan oleh Pempetisyen bagi pihak Responden untuk pendidikan anak bernama Ya Wen-Xian ... atau jumlah-jumlah seperti berikut:-

(i) RM3,000.00 iaitu separuh (1/2) daripada jumlah kos keseluruhan sebanyak RM6,000.00 dari Tahun Pertama (Year 1) hingga Tahun Keempat (Year 4).

(ii) RM2,500.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM5,000.00 dari Tahun Kelima (Year 5) hingga Tahun Keenam (Year 6);

(iii) RM3,000.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM6,000.00 dari Tingkatan 1 hingga Tingkatan 2;

(iv) RM2,000.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM4,000.00 untuk Tingkatan 3;

(v) RM6,000.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM12,000.00 dari Tingkatan 4 hingga Tingkatan 5;

(vi) RM14,000.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM28,000.00 untuk yuran Monash University Foundation Year;

(vii) RM6,500.00 iaitu separuh (1/2) daripada kos keseluruhan Perbelanjaan RM13,000.00 untuk saraan hidup, pengangkutan ke Kolej, telefon bimbit Samsung note 4, kalkulator sains untuk pengajian Monash University Foundation Year.

(f) Responden membayar balik kepada Pempetisyen wang yang dikeluarkan oleh Pempetisyen bagi pihak Responden untuk pendidikan dan latihan musik anak bernama Yap Wen-Xian ... atau atas jumlah seperti berikut:-

(i) RM18,000.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM36,800.00 untuk Kelas muzik Yamaha dari peringkat G9 hingga GS;

(g) Responden membayar balik kepada Pempetisyen separuh (1/2) daripada wang yang telah dikeluarkan oleh Pempetisyen bagi pihak Responden untuk pendidikan anak bernama Isaac Yap Wen-Shen dimana ... atau jumlah-jumlah seperti berikut:-

(i) RM3,000.00 iaitu separuh (1/2) daripada kos keseluruhan

sebanyak RM6,000.00 dari Tahun Pertama (Year 1) hingga Tahun Keempat (Year 4).

(ii) RM2,500.00 iaitu separuh (1/2) daripada kos keseruhan sebanyak RMS,000.00 dari Tahun Kelima (Year 5) hingga Tahun Keenam (Year 6);

(iii) RM3,000.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM6,000.00 dari Tingkatan 1 hingga Tingkatan 2;

(h) Responden membayar balik kepada Pempetisyen wang yang dikeluarkan oleh Pempetisyen bagi pihak Responden untuk pendidikan latihan musik anak bernama Isaac Yap Wen-Shen dimana jumlah tersebut ... atau atas jumlah seperti berikut:-

(i) RM12,400.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM24,900.00 untuk Kelas muzik Yamaha dari peringkat G9 hingga GS;

(i) Wang yang dikeluarkan untuk pembelian kereta Responden seperti berikut:-

(i) RM21,000.00 iaitu separuh daripada kos keseluruhan sebanyak RM42,000.00 untuk kereta jenis Iswara nombor pendaftaran WOP 9894; dan

(ii) RM18,000.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM36,000.00 untuk kereta jenis Proton Wira nombor pendaftaraan WHA 8765.

(j) RM30,000.00 iaitu separuh (1/2) daripada kos keseluruhan sebanyak RM60,000.00 sebagai wang pendahluan untuk perbelanjaan orang gaji Indonesia selama 10 tahun

(k) Responden membayar balik kepada Pempetisyen separuh (1/2) daripada wang yang telah dikeluarkan oleh Pempetisyen bagi pihak Responden untuk pendidikan dan perbelanjaan hidup dan kos-kos sampingan anak bernamaI an Yap Wen-Xiam di Australia ... atau jumlah seperti berikut:-

(i) RM160, 000.00 untuk yuran universiti tahun pertama;

(ii) RM160, 000.00 untuk yuran universiti tahun kedua;

(iii) RM36,000.00 berdasarkan RM4,000.00 sebulan untuk 9 bulan dari Ogos 2016 sehingga Mei 2017 untuk perbelanjaan hidup dan kos-kos sampi ngan di Australia untuk tahun pertama; dan

(iv) RM75,000.00 berdasarkan RMS000.00 sebulan untuk 15 bulan dari Jun 2017 sehingga tamat pengajian pada Ogos 2018 untuk perbelanjaan hidup dan kos-kos sampingandi Australia untuk tahun kedua.

(l) Responden diperintahkan berpindah keluar dari premis No 7, Jalan Cassia 9/KS6, Bandar Botanic 41200 Klang, Selangor Darul Ehsan dalam masa 1 bulan dari perintah ini dikeluarkan.

[3] RH in his reply, had agreed to the divorce and for the decree nisi to be made absolute after a month and had also filed a cross-petition which for ease of reference I reproduce (briefly) as follows:

> 21. Pempetisyen memberi maklumat terhadap anak IAN YAP WEN-XIAN tentang butiran universiti pengajian di Australia, alamat tempat tinggal serta nombor talipon anak tersebut bagi maksud Responden menghubunginya.
>
> 22. Perintah Akses dan hak jagaan bersama dengan Pempetisyen bagi IAN YAP WEN-XIAN dan ISSAC YAP WEN-SHEN. Semua urusan tentang Penggajian Tinggi serta hal pergi ke luar Negara harus mendapat kelulusan dan persetujuan Responden.
>
> 23. Pempetisyen membayar kepada Responden sebahagian wang perbelanjaan Anak-Anak tersebut dari sejumlah RM79,850.00 seperti ternyata di atas yang dibayar oleh Responden iaitu sejumlah RM39,925.00.
>
> 24. Pempetisyen membayar kepada Responden sebahagian wang KWSP berjumlah RM159,743.13 sejumlah wang RM79,871.56; sebahagian wang pampasan pesaraan RM31,021.28 sejumlah wang RM15,510.64 dan sebahagian wang simpanan bank berjumlah RM208,384.00 sejumlah wang RM104,192.00.
>
> 25. Pempetisyen membayar kepada Responden sebahagian kos perbelanjaan Levi, permit dan gaji orang gaji Indonesia dari sejumlah RM48,600.00 iaitu RM24,300.00.
>
> 26. Pempetisyen membayar kepada Responden sebahagian kos bayaran letrik dari sejumlah RM38,400.00 iaitu RM19,200.00.
>
> 27. Pempetisyen membayar kepada Responden sebahagian kos makanan barangan serta keperluan keluarga dari tahun 2005 sehingga bulan Februari 2017 seperti di perenggan 8.3(a) dari sejumlah RM489,530.00 iaitu RM244,765.00.
>
> 28. Pempetisyen memindah kepada Responden sebahagian dari Harta Apartmen yang di kenali sebagai Parcel No.Y2-03-06, Good Year Court Subang Perdana, Selangor di pegang di bawah Geran 129350/Ml 1/4/712, No.Petak 712, No.Tingkat 4, No.Bangunan Ml 1 No.Petak Aksesori A357, Lot No.62791, Pekan Subang Jaya, Daerah Petaling, Negari Selangor.
>
> 29. Pempetisyen memindah kepada Responden sebahagian dari Hartanah Rumah dua tingkat dengan alamat No.7, Jalan Cassia 9/KS6, Bandar Botanic, 41200 Klang di pegang di bawah Geran No.0324718, Lot No.0093705, Mukim Klang, Daerah Klang, Negeri Selangor.
>
> 30. Bayaran balik wang pinjaman sejumlah RM315,000.00 dari Standard Chartered Bank yang diambil oleh Pempetisyen atas hartanah Parcel No.Y2-03-06, Good Year Court Subang Perdana Selangor ditanggung dan dijelaskan oleh Pempetisyen sendiri.
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> 31. Perkahwinan dibubarkan.

PW did not call any other witness, whereas RH had called an official witness. Upon perusing all the evidence, relevant cause papers including the

cross-petition, and the respective written submissions by learned counsels, on 22 October 2018, I find that PW had succeeded in proving her case on balance of probabilities and I made the following orders (briefly):

PRAYER 19(a) & COUNTER CLAIM PRAYER 31 DISSOLUTION OF THE MARRIAGE

Parties have agreed to divorce. I therefore decree that the marriage be dissolved and this decree nisi shall be absolute immediately.

PRAYER 19 (b) CARE CONTROL AND CUSTODY

I further order that guardianship, care control and custody of Isaac Yap Wen-Shen be given to the petitioner and RH is given reasonable access.

PRAYER 19 (c) MAINTENANCE FOR THE CHILDREN

(i) Since Ian Yap is now above 18 years, I will not make any order for maintenance or back date the said maintenance order

(ii) For Isaac, I ordered that RH to pay maintenance of RM2,000 commencing from today until he reaches the age of 18

PRAYER 19 (d) MAINTENANCE FOR WIFE — PW is not claiming

PRAYER 19 (e) (f) (g) (h) (k) EDUCATION FOR THE CHILDREN

I refer to the evidence of RH where he has agreed to pay for the following:

(i) *Ian Yap Wen-Xian*
Education and tuition RM 9547.50
Monash foundation & cost of living RM 16445.00
Music RM 2799.00
Total RM 28791.50
For university (local) education and cost of living, RH is to bear 50% of the fees of RM150,000.00 (based on local university rate)

(ii) *Isaac Yap Wen-Shen*
Education and tuition RM 1984.00
Music RM 2799.00
Total RM 4783.00
For university (local) education, RH is to bear 50% of the fees or an amount of RM150,000.00 (based on local university rate)

PRAYER 19 (l) is allowed

Other prayers 19(i) (j) are not allowed COUNTER CLAIM

PRAYER 28 & 29

The 2 properties in question Good Year Court and Bandar Botanic were registered under the PW's name and the evidence before me is not sufficient and am not convince of RH's contribution in acquiring those properties, to enable me to invoke section 76 (1) & (2) LRA. Therefore, RH is ordered to vacate the Bandar Botanic house a month from today.

BRIEF FACTS

[4] Parties have filed agreed facts as per encls 17 and 23. In writing the brief facts of this case, I will also refer to the documents available before me. At the outset, the counsels for PW and RH had affirmed and throughout the proceeding, parties stipulated that:

(a) that the marriage had irretrievably broken down and parties have agreed to divorce and RH had agreed that custody, care and control of the younger son of this marriage be given to PW or in the alternative PW and RH are given joint custody; and

(b) the remaining issues are relating to the maintenance of the said children, the cross-petition which includes division of matrimonial assets, contribution for cost for maintenance and education of the said children of the marriage.

I will therefore confine the facts of this case to the above stated issues.

[5] PW is a teacher while RH is a part-time real estate agent and they were married on 24 June 1995 at the Jabatan Pendaftaran Negara, Wilayah Persekutuan ('the said marriage') and resided at No 7, Jalan Cassia 9/KS6, Bandar Botanic, Klang, Selangor. From their union, they were blessed with two boys, Ian Yap Wen-Xian (now age 21+ years old) and Isaac Yap Wen-Shen (now 16+ years old), together they are referred to as 'the said children'.

[6] PW is not claiming for spousal support/maintenance but is only claiming for RH to reimburse her on all expenses for the maintenance, cost of living and for the education/music classes of the said children, domestic helper and other prayers.

[7] PW in her evidence stated that the marriage had irretrievably broken down because RH had failed to dispense his responsibility as a husband and father to the said children when he failed to pay for the living cost of the family, education cost including tuition and other related activities of the said children. All through her marriage to RH, PW was the one who had to bear all the expenses above. Consequently, PW can no longer tolerate the irresponsible and unreasonable attitude of RH. Even though RH had given various promises to pay half of all those expenses, he nevertheless failed to honour his words. All in all, there is no more any common understanding to continue living under one roof as husband and wife.

SUBMISSIONS BY THE PETITIONER WIFE ('PW') DISSOLUTION OF THE MARRIAGE

[8] Parties agreed to divorce and I refer to the case cited by learned counsel for PW, *Renuka a/p Muniandy @ Ramakrishnan v Jeeva a/l Kalia Perumal* [2017] 9 MLJ 473, where it was held that, as the parties had mutually agreed that the marriage had broken down irretrievably and there was no claim by the petitioner for her own maintenance under s 78 of the Law Reform (Marriage and Divorce) Act 1976, there was no need for the court to make a finding as to the cause of the breakdown of the marriage. As in this present case before this court, parties have agreed to divorce and the petitioner wife is not claiming for spousal support or maintenance, therefore I do not find it necessary for me to make a finding as to the breakdown of the marriage between PW and RH.

CUSTODY, CARE AND CONTROL OF ISAAC YAP WEN-SHEN WHO IS NOW 16+ YEARS OLD

[9] PW submitted that by referring to s 88 of the Law Reform (Marriage And Divorce) Act 1976 ('the Act') the custody, care and control of Isaac Yap Wen-Shen be given solely to PW since Isaac is now studying in Australia and PW is presently the guardian for Isaac Yap.

PROPERTIES PURCHASED UNDER PW'S NAME

[10] During their marriage, PW had purchased two properties ie an apartment at No Y2–03–06 Good Year Court, Subang Perdana, Selangor ('the apartment') which was purchased in 14 October 1996 and a terrace house at No 7 Jalan Cassia 9/KS6, Bandar Botanic, Klang, Selangor ('the Botanic house') which was purchased in 21 January 2002. It is not disputed that the two properties were registered under PW's name and it is for RH to prove he has a share in those properties. In this case RH claimed that those properties were held by PW on trust for him and in this regard, PW referred to the bare evidence of RH in court as follows:

6. Q:	Why is the Property (Apartment) under the name of the Petitioner?
A:	She requested that the property be registered under her name and when I said why not under both names she said 'you can trust me
17. Q:	Why is the SPA (Botanic House) under the name of the Petitioner?
A:	As before stated as in the property at Good Year Court she pleaded with me to register her name although the offer to purchase was for both of us. The Petitioner said that she would be eligible for government loan with low interest rate which is beneficial for both of us and I agreed. The Petitioner again said 'She could be trusted'.

[11] PW further submitted that despite the bare claim, RH had failed to provide any plausible proof to support his contention that those properties were purchased by PW and was holding the said properties on trust for him. PW referred to the case of *Perman Sdn Bhd & Ors v European Commodities Sdn Bhd & Anor* [2006] 1 MLJ 97; [2005] 4 CLJ 750, where Court of Appeal held:

> There is nothing in that document or the surrounding circumstances that goes to affirmatively show a clear intention to create a binding declaration of a trust on the part of the first defendant which is the true owner of the Family shares.
>
> The standard of proving that an express trust exists in given circumstances is a high one. For, it is the policy of the law that no person's property should be burdened with the interest of another in the absence of the clearest proof.

[12] In addition, RH is also claiming his half share of the properties that is presently registered under PW's name. By referring to s 76(1)–(2) of the Act for direct monetary contribution and under s 76(3) for contribution in kind, PW submitted that since the properties were registered under her name, the duty is on RH to prove that it was acquired by their joint efforts. I was alluded to the case of *Yap Yen Piow v Hee Wee Eng* [2017] 1 MLJ 17 where it was decided as follows:

> [13] The Act does not define what matrimonial assets are. However, when the property had been acquired by joint efforts, it must be brought to account for purpose of distribution. *The burden will appear to be on the person who alleges that it was acquired by joint efforts*. (Emphasis added.)

A. The apartment

[13] RH argued that he had paid a total of RM234,170 which consisted of RM14,200, ie, 10% of the purchase price plus the legal fees, cost for fixtures and fittings RM23,000, monthly payment for the first bank loan with Nova Scotia Bank RM1,264 (monthly), second loan with Alliance Bank RM900 (monthly), maintenance and sinking fund. PW however, during re-examination affirmed that she was the one who had paid the 10% deposit which was made through the real estate agent to the seller and the money was from her savings and from her income by giving tuition classes. PW submitted that RH had failed to substantiate his claim that he paid the 10% deposit for the said apartment as well as the RM23,000 for the fixtures and fittings. RH had also claim in his evidence that he paid for the apartment monthly but PW however argued that RH had failed to plead to specify from which period or duration that he had paid the monthly payment to the said bank and therefore his claim must fail. I was alluded to Federal Court case in *Giga Engineering & Construction Sdn Bhd v Yip Chee Seng & Sons Sdn Bhd & Anor* [2015] 6 MLJ

449, at para 42 which says failure to plead cannot be improved by oral evidence.

[14] According to PW, she intended to purchase the said property as a savings for the said children's education, but RH was not supportive and insisted that he doesn't want to be bogged down with any liabilities for the payment of the said apartment. PW proceeded on her own and purchased the said apartment.

[15] However, because PW's salary at that time didn't qualify her for a housing loan, RH had agreed to have his name as a joint borrower only without being liable for the monthly repayment of the said loan. PW submitted that she had given the monthly repayment money to pay the bank to RH due to logistical convenience since his office was near Nova Scotia Bank in Kuala Lumpur while her school was located in Petaling Jaya at that time. She further argued that, notwithstanding the fact that the receipt for payment was under their joint names since it was a joint account but it was her who solely paid for the loan. Even though during the trial RH claimed that he paid Alliance Bank (second loan) monthly instalment for the apartment but as argued by PW, such matters were never pleaded by RH to specify from which period or duration he has paid the monthly payment to the said bank and therefore such bare claim must necessarily fail.

[16] PW further argued that after a period of almost seven years, in her effort to reduce her monthly instalment, PW refinanced the said apartment to Alliance Bank which offers a lower interest rate and PW took the loan herself (refer p 106 C1 (Part A)). PW submitted that this fact supported PW's contention that RH was not interested in buying the said apartment and was only loaning his name to enable PW to get a housing loan and not for RH to pay the said loan. The monthly instalment of Alliance Bank was paid by PW via monthly deduction from her savings account (refer pp 358–392 D1). Even though RH tendered cash bank-in slip of Alliance Bank (refer pp 159–169 C2), PW submitted that this payment was under the name of PW and this supported the contention of PW that she was the sole payee for this account.

[17] In 2016, in order to finance the son's education Ian Yap for his foundation and first degree at Bond University Australia, PW had re-financed this apartment to Standard Chartered Bank with PW as the principal borrower. According to PW, RH knew about this and he had no objection at the material time and had only raised his objection after PW filed this divorce petition which PW submitted is an afterthought. Consequently, the above factual arguments supports the contention by PW that she had when she purchased the said apartment, her principal goal was to subsequently help finance the education of the said children. PW further submitted that RH had failed to

prove his monthly payment of the said apartment to Alliance Bank and had therefore failed to prove his contribution in the acquisition of the said apartment.

MAINTENANCE AND SINKING FUND

[18] RH had also claimed that he paid the maintenance and sinking fund for the said apartment. PW however countered argued that maintenance and sinking fund is similar to any utility bills and therefore it cannot be said that he had contributed to the acquisition of the said apartment. However unknown to PW, RH had also failed to pay the maintenance and sinking fund of the said apartment and PW was the one who paid in full the outstanding fee and paid RM3,271.81 (refer p 125 C1). PW submitted that RH had in fact didn't pay the maintenance and sinking fund as claimed and as promised by him.

[19] RH had also claimed to have paid a total of RM234,170 for the said apartment but PW argued that based on the above argument RH had in fact failed to prove his contribution for the amount above for the said apartment and therefore his claim for half share of the said property ought to be dismissed. By referring to s 76(2)(c) of the Act, PW submitted that the courts in exercising its power for division of matrimonial assets, must consider the need of the minor children of the marriage. I was alluded to the case of *Yap Yen Piow v Hee Wee Eng* [2017] 1 MLJ 17, as follows:

> [7] In addition, it is paramount duty of the court in dealing with distribution of assets under s 76(1) or (3) to protect the interest of the minor children. This duty is expressly stated in s 76(2)(c) and 76(4)(b) specifically. Courts have gone to expand the meaning of matrimonial assets to benefit one of the spouses but have failed to apportion the assets to be held in trust for the benefit of the minor children (see *Koay Cheng Eng v Linda Herawati Santosa* [2008] 4 MLJ 863 (CA); *Lim Kuen Kuen v Hiew Kim Fook & Anor* [1994] 2 MLJ 693; *Ong Chin Ngoh v Lam Chin Kian* [1992] 2 SLR 414). For example, EPF money which may fall under s 76(3) or (5) has been ordered by courts to be apportioned to the wife even in the presence of minor children. The appropriate order if at all, if the court takes the view that the EPF money must be dealt with, it must order the part to be withdrawn and to be held in trust by both parties for the benefit of the minor children with the necessary consequential orders.

[20] PW concluded by submitting that since the son Ian Yap is still a minor and PW is the guardian for Ian Yap, it is therefore in the circumstances suitable that the said apartment be held on trust for the benefit of the youngest son who is still a minor.

B. The Botanic house

[21] RH is also claiming half share of the Botanic house and claimed that he has paid RM13,800 as the 10% deposit and RM43,900 as cost for fittings and other apparatus. However it is argued by PW, since RH had always maintained the stand that he is not interested in purchasing any property and paying the loan, PW decided to purchase the next house known as Botanic house on her own and financed by a government loan (SPA dated 21 January 2002 (pp 406–407 D2)) and loan payment was made via monthly deductions from her salary (pp 91–100 C2 — Part B). PW submitted that the allegation that RH paid 10% deposit is no supported by the documentary evidence where clearly the receipt was made under PW's name (p 275 C2 — Part B). PW claimed the money that RH had deposited in her account was not for the deposit but for the return of monies spent by her for the said children's education, tuition and music classes that was advanced by PW. PW finds support in the evidence of RH when he admitted that he is willing to pay half of the said children's school fees when he admitted during cross-examination on 23 May 2018 as follows:

Q. And you knew all of the fees were paid by Ms Ong.

A. Yes, I am willing to pay half of my share.

[22] PW submitted that the allegation by RH that he paid the 10% deposit was not supported by any documentary evidence and the fact that RH claimed he had paid the said deposit is to create an interest in the Botanic property. I was alluded to the case of *Ng Li Lin (P) v Ting Tian Hwa* [2017] 10 MLJ 626:

> (2) Despite his initial payment of RM50,000 towards the acquisition of the property, the defendant had allowed the plaintiff to be the sole purchaser and registered owner of the property. The bank loan was in her name. The plaintiff contended that these facts pointed to an intention on the defendant's part that his contribution was a gift to her; that a presumption of advancement applied in her favour negating any presumption of a resulting trust in his favour. The presumption of advancement was rebuttable but the defendant failed to adduce sufficient evidence in that regard. Apart from paying the RM50,000 deposit and six-monthly instalments in 2014, there was no evidence of any direct financial contribution by the defendant towards the purchase of the property. The plaintiff had paid the balance of the purchase price with her own financial resources and through the bank loan.

[23] Applying the principle above, PW submitted that whatever payment that RH had made into the account of PW (which PW denied) the payment can be classified as presumption of advancement which does not constitute creating any interest in the Botanic house. PW submitted that even though RH alleged that the has paid a sum of RM43,900 for fittings but he only managed to tender an invoice of RM6,240 for a cabinet (p 11, E, Part C) and no other documents to support his contention.

[24] PW submitted that RH had claimed that he had withdrawn RM159,743.13 from his EPF money and had used it for the family's expenses and is now claiming half of it from PW. However PW submitted that from the EPF statement tendered by RH (p 270 C2 — Part B), it only showed a withdrawal of RM41,743.13 and therefore RH's claim that he has withdrawn RM159,743.13 is not supported by any document/evidence. PW submitted that during cross-examination RH agreed that the withdrawal of RM41,743.13 does not show what the payment was for. By referring to the EPF statement dated 5 December 1996 (p 401, D2 — Part C) RH claimed that he took out the money to pay for the apartment. However, PW submitted that from the said statement the said withdrawal was made in March 1989 before their marriage and seven years before PW purchased the said apartment on 14 October 1996. Therefore PW submitted that it is not possible that the said withdrawal was made for the said apartment.

[25] RH had also claimed that he has spent RM489,530 for family expenses and is now claiming half of it from PW. RH claimed that he had withdrawn a total of RM208,348 for the family expenses. But it was just a bare averment without any supporting evidence. However it is the contention of PW that this claim was not pleaded and supported with facts and ought not to be entertained by this court. RH submitted the following to support his claim as follows:

(a) hand written notes stating RM208,354 spent (from year 2004–2010 — p 408 D2 — Part C);

(b) hand written notes stating RM153,000 (from year 2011–2017 — p 409, D2 — Part C)

(c) Alliance savings book (pp 293–304, C2 — Part B);

(d) cash withdrawal bank slip (pp 410–456, D2 — Part C);

(e) hand written log book (pp 459–477, D2 — Part C); and

(f) various receipts (pp 478–502, D2 — Part C).

PW submitted that the handwritten notes/log book was RH's own hand writing and it was not verified by PW and therefore it is suspect and not reliable. For the withdrawal from Alliance Bank from year 2004–2010, PW submitted that the amount withdrawn do not tally with the amount claimed. The purpose of the withdrawal cannot be confirmed that it was for the family and this submission is supported by the evidence of RW2, an Alliance Bank officer who cannot confirmed the purpose of the said withdrawal. In this instance, even RH during cross-examination agreed that those withdrawals could be used for his own personal expenses. PW referred to the various receipts tendered by RH and submitted that the expenses are suspect and not for the family when purchases were made for liquor (Joly Shandy and Anglia Shandy)

and it is definitely not consumed by his children/family. And most receipts shows RH purchased food for single person only for eg purchase made at Mc Donald's was for a person and not for the family. All in all the various receipts issued by RH were suspect and does not support his contention that he spent it for his family. His contention that he has helped with house work was rebutted by the fact that they did engaged a servant/domestic helper to help with the domestics chores of the family.

[26] In conclusion, the claim by RH for his contribution in kind towards the family were not supported by any plausible evidential materials and the expenses he did spent for his family are what is to be expected from a father when he agreed that the household consumption and the miscellaneous expenses he spent for his family have been paid as duty of a husband and a father to which he agreed. And these expenses cannot be construed as contribution towards the purchase of the Botanic house which entitle RH to a claim towards the Botanic house. In the alternative PW submitted that if the court is not with her the court can invoke s 76(2)(c) or (4)(b) of the Act that the share can be held on trust for the youngest son who is still a minor.

[27] Both of the said properties above, ie the apartment and the Botanic house are still encumbered. PW had to refinance the said apartment to finance the study of their eldest son and the Botanic house is still charged to the government. PW submitted that RH has not suggested that he is to share the liability in servicing the said loans and had only submitted his right to half share and leave it to PW to bear the financial liability in servicing both loans. In light of the foregoing, PW submitted that it is only just and fair in the circumstances that both properties remain in her name solely.

[28] During the examination-in-chief, RH has agreed to pay his half share for the education expenses for the said children including their tuition and music classes. But he changed his mind regarding the education for overseas studies. PW submitted that this goes to show that RH is not a reliable witness. PW submitted that RH is also liable to pay his half share for the domestic/servant and it was not disputed that it was PW who had paid for the said servant for ten years. RH claimed that the said apartment was rented out at a rate of RM700 and he has to top-up to pay for the monthly instalment. PW submitted that on further cross-examination, RH didn't even know that the said rental of the apartment was increased and hence there is no necessity for the said top up. All in all RH was not telling the truth when he said he had to top up paying for the monthly instalment of the said apartment. PW submitted that from the above, it is clear that RH is not a truthful witness and his evidence is not safe to be relied upon.

SUBMISSION BY THE RESPONDENT HUSBAND ('RH') EDUCATION FOR IAN YAP WEN-XIAN

[29] During the examination-in-chief and by referring the cost of music classes for Ian Yap as shown via exhs P1–P6 (total RM19,095), RH had agreed to pay half, ie RM9,547.50. RH had also agreed to pay half of Ian Yap's foundation cost (total RM32,891) at RM16,445. However, RH in his evidence stated that PW didn't get his consent before sending Ian Yap to further his tertiary education in Australia and he can't afford to pay for Ian Yap's education in Australia. PW in her evidence admitted that her sister in Australia is willing to finance Ian Yap's education in Australia. Therefore, since it was PW's decision to send Ian Yap to further his tertiary study in Australia therefore she has to bear the cost of Ian Yap's said education.

EDUCATION FOR ISAAC YAP WEN SHEN

[30] During the examination in chief and by referring the cost of tuition classes from year 2013–2017 (total RM3,968) RH had agreed to pay half, ie RM1,984. For music classes for Isaac Yap as shown via exh P6 (total RM5,598), RH had agreed to pay half, ie RM2,799.

DOMESTIC HELPER/SERVANT

[31] RH submitted that even though PW in her evidence stated that she has paid a total of RM60,000 for the said servant for ten years, but she has no other evidence to support her claim. RH submitted that he paid for the levy for the said servant for ten years totalling RM4,450 and he had also spent RM12 per day on food for the said servant totalling RM52,800.

MAINTENANCE FOR THE SAID CHIDREN/FAMILY

[32] RH submitted that PW had failed to prove that she was the one responsible for the maintenance of the said children of the marriage and of the family. RH submitted that in fact he was the one who supported the family. RH claimed that they had a prior agreement that he will be in charge of the family expenses and PW will be in charge of the properties. From year 2005–2017 RH alleged that he had spent a total of RM479,384 for the family expenses. For the apartment, RH claimed to have spent a total sum of RM227,937.52 and prayed for the court to order the sale of the said apartment to RH at RM290,000 or current market value of the said house minus his contribution of RM227,937.52. He argued that he really need the apartment as he is now 63 years old and can't afford to secure any loan to buy a new house for himself. For the Botanic house, RH prayed that the court order the sale of the said house at RM650,000 or current market value minus his contribution of RM160,424.76 and the balance sum to be shared equally between them, and

a portion to be set aside for the benefit of Isaac where PW and RH are to be the trustees of the said account.

THE LAW

[33] Section 76(2)(c) provides the power of court for division of matrimonial assets acquired during the marriage by the joint effort of parties upon granting a decree of divorce or judicial separation

76 Power for court to order division of matrimonial assets

(1) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

(2) In exercising the power conferred by subsection (1) the court shall have regard to:

(a) The extent of the contributions made by each party in money, property or work towards the acquiring of the assets;

(b) Any debts owing by either party which were contracted for their joint benefit;

(c) The needs of the minor children, if any, of the marriage, and subject to those considerations, the court shall incline towards equality of division.

(3) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

(4) In exercising the power conferred by subsection (3) the court shall have regard to:

(a) The extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring the family;

(b) The needs of the minor children, if any, of the marriage, and subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case, the party by whose effort the assets were acquired shall receive a greater proportion.

(5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

FINDINGS OF THIS COURT

Dissolution of the marriage

[34] Parties agreed to divorce, and I hold that the marriage between PW and RH had irretrievably broken down and I therefore decree that the marriage be dissolved and this decree nisi shall be made absolute immediately.

Guardianship, care control and custody of the said chidren, maintenance and education

[35] I take note that Ian Yap is now above 18 years and therefore I will not make any order for custody, care and control of Ian Yap. I have also taken note that Isaac Yap is now studying in Australia and taking into consideration the acrimony between parties and for the benefit of Isaac, I have ordered that guardianship, care control and custody of Isaac Yap Wen-Shen be given to PW while RH is given reasonable access, and I have further ordered that RH is to pay an amount of RM2,000 monthly as maintenance of Isaac Yap. I refer to the evidence of RH where he has agreed to pay for the following:

(i) Ian Yap Wen-Xian	
Education and tuition	RM9547.50
Monash foundation & cost of living	RM16445
Music	RM2799
Total	RM28791.50

For university (local) education and cost of living, RH is to bear 50% of the fees of RM150,000 (based on local university rate)

(ii) Isaac Yap Wen-Shen	
Education and tuition	RM1984
Music	RM2799
Total	RM4783

For university (local) education, RH is to bear 50% of the fees or an amount of RM150,000 (based on local university rate)

PROPERTIES

[36] During their marriage, PW had purchased two properties ie an apartment at No Y2–03–06 Good Year Court, Subang Perdana, Selangor ('the apartment') which was purchased in 14 October 1996 and a terrace house at No 7 Jalan Cassia 9/KS6, Bandar Botanic, Klang, Selangor ('the Botanic house') which was purchased in 21 January 2002. These two properties were registered under the sole name of PW and are still encumbered with loans

which is being serviced solely by PW until today. The issue before this court is, whether the properties above constitute matrimonial assets. This can be determined by referring to s 76 of the Act. Taking the guide from the Court of Appeal in *Yap Yen Piow*, it had been clearly clarified as follows:

> [11] Section 76 of the LRA 1976 is the key statutory provision to deal with the division of the property. In principle, it differentiates assets acquired during the subsistence of marriage into three types. They are as follows:
>
> (a) any assets acquired by joint efforts which we have classified as matrimonial property. In this category, the court has an obligation to divide the assets (see s 76(1) of the LRA 1976);
>
> (b) any assets acquired by one party by sole effort which we classify as non-matrimonial property. In this category, the court is not obliged to divide but may do so (see s 76(3) of the LRA 1976); and
>
> (c) assets which were acquired before the marriage but has been substantially improved by the other party or by their joint efforts. In this category, if there is no substantial improvement, the property is not subjected to division at all. In addition, if the property has been acquired before the marriage and subjected to a loan, the said property may not fall in that category (see s 76(5) of the LRA 1976).

[37] The said properties are registered under the sole name of PW and RH is now claiming his half share by claiming that he had not only directly contributed and but had also contributed in kind towards the purchase of the said properties. It is the contention of PW that the properties were purchased for the purpose of the said children's education which was proven by the fact that the said apartment was refinanced to Standard Chartered Bank to enable PW to send her eldest son Ian Yap to further his tertiary education in Bond University of Australia. According to PW, RH was never interested and has never supported her in purchasing those said properties because he didn't want to be burden with the monthly instalment or the need to service the loan. Though RH disagreed with this contention by PW, I find the evidence of PW to more consistent and is supported by documentary evidence which was not successfully rebutted as compared to the evidence of RH who was evasive in nature and thus creating doubts in his evidence. In the circumstances of the case I find the evidence of PW to be more reliable and plausible. In the circumstances of the case it is my considered view that the documents produced by PW supported her contentions that she was the sole contributor to the said properties.

[38] According to RH, he had paid the 10% deposit for the purchase of the said apartment. However looking at all the evidence before the court, the said evidence by RH is not supported by compelling documentary evidence. What was shown to the court was a receipt for the said deposit issued under the name

of PW (refer p 275 C2 — Part B). The hole in the evidence of RH becomes clearer and unbelievable when his story to the court that he had withdrew from his EPF to pay for the apartment was proven during cross to be false and unsustainable. It appears that the alleged withdrawal by RH was made seven years prior to the purchase of the said apartment and even before the marriage between PW and RH. When learned counsel put to RH that the earlier withdrawal has nothing to do with the purchase of the said apartment, RH took the easy way out and said he was not sure.

[39] Regarding the claim by RH that he had spent a total of RM498,530 towards the maintenance of his family (refer to para 25 above), it is my considered view looking at the evidence and the whole circumstances of the case, that such a claim by RH is not supported by any credible materials of evidential value. I refer to his hand-written notes stating he has spent a total of RM208,354 spent (from year 2004–2010 (pp 408 D2 — Part C) which are stated as follows:

Savings account withdrawn from 2004–2010 for food and bills:

	YEAR	TOTAL SUM
1	2004	RM 70,210.00
2	2006	RM24,350.00
3	2007	RM15,658.00
4	2008	RM7,000.00
5	2009	RM29,558.00
6	2010	RM61,608.00
	TOTAL	RM208,384.00

When his evidence is legally scrutinised, I hold that RH is not a truthful witness and his evidence is not reliable for me to anchor my decision on. For example, when learned counsel for PW during cross-examination referred to p 304 C2 and put it to RH that the withdrawal for RM19,308 stated as DCM on 19 August 2010 was too large an amount for RH to withdraw for household items, RH had failed or refused to answer. Learned counsel then referred to p 302 C2 and put it to RH that the withdrawal for RM25,000 stated as DCM on 13 November 2009 was too large an amount for RH to withdraw for household items to which RH disagree. It is my considered view in the circumstances of the case that the evidence of RH is not supported by any plausible material of evidential value to anchor such evidence for the court to rely upon in arriving at its decision. All in all, in the circumstances, RH is not a witness to be believed. The law is trite as decided by the Federal Court in the case of *Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd* [1994] 3 MLJ 777, that a party who makes a claim for damages or compensation must prove such claim. It is insufficient to merely write down the particulars and

throw them at the head of the court and merely say that is the losses suffered and asks for compensation thereof. The law makes it incumbent on such a person to prove the claim to the satisfaction of the court.

[40] RH had also in his evidence stated that he has spent a total of RM153,000 as stated in his hand-written notes (from year 2011–2017 — pp 409, D2 — Part C) which are stated as follows:

Bank withdraw slips:

	YEAR	TOTAL SUM
1	2017	RM 1,800.00
2	2016	RM25,500.00
3	2015	Rm18,600.00
4	2014	RM35,500.00
5	2013	RM21,950.00
6	2012	RM31,900.00
7	2011	RM17,750.00
	TOTAL	RM153,000.00

Similarly, from this evidence by RH, I find his evidence are not to be believed and clearly in the circumstance, RH is not a truthful. When learned counsel for PW during cross-examination referred to pp 410–456 D2 and put it to RH that the alleged withdrawal for RM153,000 as claimed had nothing to show (not even remarks on the withdrawal slips) that it had been used on household items to which RH failed or refused to answer. It is my considered view that, even if RH had spent on household expenses (which in the circumstances of the case to be highly unlikely), that fact alone is not sufficient for RH to invoke the provision of s 76(2) of the Act to show his contributions to the purchase of the said properties. I find the evidence of PW to be highly probable in the circumstances that RH was never interested to purchase any property or to commit himself to any loan in purchasing the said properties. It is also probable that PW was the main contributor for the maintenance and education of the said children when RH had at last in his evidence admitted and had agreed to pay half of the education expenses of the said children paid by PW.

[41] I agree with the submission of PW that for the withdrawal from Alliance Bank from year 2004–2010, the amount withdrawn does not tally with the amount claimed by RH and the purpose of the withdrawal cannot be confirmed that it was for the family and this is supported by the evidence of RW2, an Alliance Bank officer who cannot confirmed the purpose of the said withdrawal. Even RH during cross-examination agreed that those withdrawals could be used for his own personal expenses.

[42] Regarding the various receipts tendered by RH which he claimed the expenses are for the family, I also find RH is not a truthful witness and his evidence is suspect. When it was put to him that the purchases he made were mostly for liquor and when it was also put to him that the drink Joly/Anglia Shandy contains alcohol, RH disagreed but however when pressed on further he later admitted the said drinks do contain alcohol. When learned counsel puts it further to him that the said drinks were intended for him, he answered that those drinks are for his son Isaac Yap since the said son loves these drinks. I find RH to be untruthful in the intended purchase of those drinks. Looking at the bill referred to by learned counsel it was dated 11 January 2017 and at that material time the said son Isaac Yap was only 14 years old, and in the circumstances it is unfathomable and certainly immoral that a minor is fed alcoholic beverages by the father. The same conclusion is arrived at when RH was referred to a McDonald receipt which showed that he made a purchase for a single burger to which RH claimed was for his son. I find it hard to believe that a caring father will only buy a single burger for only one of his son which in my considered view shows that RH made the purchase for himself and not for his sons. Based on my above observation, it is my considered view in the circumstances that the purchases were made by RH for himself and he cannot therefore claim that he made those purchases for the said children. And even if he made those purchases for the family, it is also my considered view in the circumstances of the case those purchases cannot be considered as his contribution for the acquiring of the said properties as claimed by RH. Most receipts adduced by RH shows that he had purchased food for a single person only and not for the family. All in all the various receipts issued by RH were suspect and does not support his contention that he had spent on the family. His contention that he has helped with house work was rebutted by the fact that they did engaged a servant/domestic helper to help with the domestics chores of the family.

[43] Guided by the pronouncements of the Court of Appeal in *Yap Yen Piow* and anchored on s 76(2) and (3) of the Act, It is my considered view that RH had failed to prove to the satisfaction of this court of his alleged contributions for the purchase of the said properties and therefore his claim for half share of those said properties are dismissed.

[44] As for the issue of the two cars (a Proton Iswara and a Proton Wira), It had been successfully established during the trial that PW was the one responsible for buying and paying for the said motor vehicles. This was admitted by RH in his evidence when he confirmed that PW was the one who had paid for the said cars but he was using it, claiming that it was used to fetch the said children of the marriage. Based on this evidence and pursuant to the provision of s 76(2) of the Act, I have ordered that RH is to pay half of the total cost spent on the said cars, ie WDP 9894 for RM21,000 and WHA 8765 for

RM18,000. As for the issue of domestic helper it is not disputed that they had the said domestic helper for a total of ten years and therefore I have ordered that RH is to pay half of the total expenses spent on this domestic helper. RH is also claiming for the expenses for levy and food for the said domestic helper, but I find he has failed to support his claim with any evidential proof.

CONCLUSION

[45] In light of the foregoing and after closely scrutinising the application and examining all evidence adduced before me, I dismissed RH's application with an order for cost of RM10,000 to be paid to PW.

Petition allowed and the respondent's application dismissed with costs of RM10,000.

Reported by Izzat Fauzan